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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALEC BOBROFF, CLIFFORD ROSS MARTIN, and
PHILLIP B. DOLLIVER

Appeal 2010-000137
Application 10/798,060
Technology Center 3700

Before WILLIAM F. PATE, III, STEFAN STAICOVICI, and
KEN B. BARRETT, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Alec Bobroff, et al. (Appellants) appeal from the Examiner's decision to reject under 35 U.S.C. § 102(b) claims 1-5, 7-9, and 11 as anticipated by Inoue (US 5,153,828, iss. Oct. 6, 1992); and under 35 U.S.C. § 103(a) claim 6 as unpatentable over Inoue and Killian (US 5,876,387, iss. Mar. 2, 1999), claim 10 as unpatentable over Inoue and Valerio (US 5,989,234, iss. Nov. 23, 1999)[1], and claims 12, 14 and 15 as unpatentable over Inoue. Claim 13 has been withdrawn by the Examiner. We have jurisdiction over this appeal under 35 U.S.C. § 6.

THE INVENTION

Appellants' invention relates to a postoperative fluid monitoring and alert system 10 including a fluid collection device 12, a surgical drain tube 18, a liquid collection sensor (i.e., a camera) and a controller 24. Spec. 3:6-10 and 26-28 and fig. 1.

Claim 1 is representative of the claimed invention and reads as follows:

> 1. A postoperative fluid monitoring and alert system comprising:
>
> a fluid collection device having a vacuum reservoir configured to be placed in communication with a suction pathway that is at least partially defined by a surgical drain tube;
>
> at least one liquid collection sensor configured to obtain data from the suction pathway;

[1] On Page 7 of the Examiner's Answer, although not listed in the heading of the rejection, the Examiner further relies on the disclosure of Blankenship (US 5,116,312, iss. May 26, 1992), for disclosing an autotransfusion device.

> a controller connected to the sensor and configured to receive current procedure data from the sensor, save the data to create historical procedure data, compare the current procedure data to the historical procedure data and activate an alarm when predefined trends in the data are detected.

SUMMARY OF DECISION

We REVERSE.

OPINION

Claim 1

Appellants argue that Inoue fails to teach a controller configured to compare "current procedure data" to "historical procedure data," as required by independent claim 1. Br. 5-7. *See also* Br., Claims Appendix.

In response, the Examiner takes the position that because any controller, including that taught by Inoue, that contains a CPU with memory can store and compare data, the controller of Inoue is fully capable of executing algorithms to compare collected and/or stored data. Ans. 8. As evidence, the Examiner points to column 8, lines 24-40 of Inoue to show that:

> Inoue discloses calculation of blood yet-to-be-collected from previously registered weight of the blood bag (i.e. historical procedure data) and set blood collection amount. This necessarily requires comparison of the yet-to-be-collected amount of blood, with the set collection amount, which examiner also considers to be historical procedure data as it was entered at the start of the procedure before the current data is collected.

Id.

In other words, as far as we understand, the Examiner appears to opine that the controller of Inoue, by virtue of merely having a CPU, is capable of receiving current procedure data from a sensor, saving the (current procedure) data to create historical procedure data, and comparing the current procedure data to the historical procedure data. Hence, the Examiner's position appears to be that the set blood collection amount and the previously registered weight of the blood bag constitute the claimed "historical procedure data" merely because they were entered at the start of the blood collecting procedure. *See* Ans. 8.

We do not agree with the Examiner's position, because, although the preset blood collection amount and the previously registered weight of the blood bag are entered at the start of the blood collecting procedure in Inoue, claim 1 requires that "historical procedure data" be created from saved "current procedure data" that is received from a sensor. *See* Br., Claims Appendix. The controller of Inoue receives the amount of blood collected in the blood bag (from strain gauges 34 and weight sensor amplification unit 38) and calculates the amount of blood yet-to-be collected based on the specific gravity of blood, the set blood collection amount, and the previously registered weight of the blood bag. Inoue 7:33-34 and 8: 29-38. Although the set blood collection amount and the previously registered weight of the blood bag are saved in memory 66 (*see* Inoue7:13-14), they are not saved from "current procedure data," i.e., the amount of blood collected in the blood bag, and are not received from any sensor, but are merely set values that are input into the controller at the start of the blood collection procedure. Hence, we agree with Appellants that "the CPU [of Inoue]

compares currently detected data only to the set-points contained in memory." Br. 6.

Accordingly, Inoue does not teach all the limitations of independent claim 1 or its respective, dependent claims 2-5, 7-9, and 11. Therefore, the rejection of claims 1-5, 7-9, and 11 under 35 U.S.C. § 102(b) as anticipated by Inoue cannot be sustained.

Claims 6, 10, 12, 14, and 15

The Examiner's proposed modifications of Inoue or the addition of Killian or Valerio does not remedy the deficiencies of Inoue as described above. As such, the rejections under 35 U.S.C. § 103(a) of claim 6 as unpatentable over Inoue and Killian; of claim 10 as unpatentable over Inoue and Valerio; and of claims 12, 14, and 15 as unpatentable over Inoue likewise cannot be sustained.

DECISION

The Examiner's decision to reject claims 1-12, 14, and 15 is reversed.

REVERSED

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